

The State of South Carolina
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

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SEP 05 2017

SC Court of Appeals

Appellate Case No. 2017-001258
Case No. 2015-CP-26-00034

Christine LeFont,..... Appellant,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation,..... Respondents.

**APPELLANT'S RETURN
TO RESPONDENT'S MOTION TO DISMISS**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), the Appellant files this Return in opposition to Respondent City of Myrtle Beach's Motion to Dismiss.

ARGUMENT

Contrary to the Respondent's bald assertions, this Court has jurisdiction because: (1) Appellant timely filed and served a post-trial motion, thereby staying the deadline for filing a notice of appeal; and (2) Appellant subsequently filed and served a timely notice of appeal within 30 days after receipt of written notice of entry of the trial court's order denying Appellant's post-trial motion. Respondent's entire argument for dismissal of this appeal

is disingenuously based on a false premise that Appellant's Motion for Reconsideration and/or Alter or Amend and New Trial is nothing but a motion for a new trial.

I. Appellant's post-trial motion did stay the deadline to appeal.

A. Appellant's post-trial motion was not just a motion for new trial.

Respondent's motion to dismiss is premised on the unfounded presumption that the Appellant's post-trial motion should "be construed as a motion for a new trial." (Resp.'s Motion to Dismiss, p. 3). Appellant's post-trial motion was captioned: "Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial." (Exhibit A to Resp.'s Motion to Dismiss). The substance of Appellant's post-trial motion requested, in part, the following relief:

- "Plaintiff respectfully asks this Court to reconsider and/or to alter and amend its Order granting verdict for the Defendant, and grant a new trial for the reasons set forth below." (Exhibit A, p. 1, Resp.'s Motion to Dismiss).
- "To ensure adequate preservation of this issue, the Plaintiff respectfully requests that the Court clarify if, in fact, this was ground upon which it granted a directed verdict." (Exhibit A, p. 8, Resp.'s Motion to Dismiss).
- "For the foregoing reasons, Plaintiff respectfully requests that this Court reconsider the above-mentioned, and address and rule on the matters previously raised but not ruled upon..." (Exhibit A, p. 9, Resp.'s Motion to Dismiss).

Given the substance of the motion and the relief requested within the motion, Appellant submits it is abundantly clear that the Appellant sought for the circuit court to reconsider, alter or amend its order, and based upon that

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TO:

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South Carolina Court of Appeals
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Columbia, South Carolina 29201

reconsideration and alteration or amendment of the order, then grant a new trial. Thus, Respondent's conclusive statement that "the relief sought was a new trial under Rule 59(a)" is not a fair characterization of the motion given that it also sought relief as outlined herein.

B. Appellant's post-trial motion is part and parcel of Appellant's single bite at the apple.

As Respondent points out in its motion to dismiss, *a* timely post-trial motion will stay the time for an appeal for all parties. That is, "[t]he time for appeal for all parties shall be stayed by *a* timely motion under this Rule." Rule 59(f), SCRCP; *see also* Rule 203(b)(1), SCACR (emphases added). Of course, it is well accepted that a "timely post-trial motion, **including a motion to alter or amend . . . pursuant to Rule 59(e), SCRCP**, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion." *Elam v. South Carolina Dep't. of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (emphasis added).

Here, as shown in Exhibit A to the Respondent's Motion to Dismiss, the Appellant filed a post-trial motion pursuant to Rule 59, SCRCP, on September 20, 2016, prior to receipt of written notice of entry of the order. This motion was timely pursuant to Rule 59(e), SCRCP, given that the motion was "served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP.

II. Appellant's notice of appeal was timely.

Because the Appellant timely filed and served on September 20, 2016 a post-trial motion pursuant to Rule 59, SCRCP, her time to file a notice of

appeal was stayed pending the circuit court's determination of that motion. See Rule 59(f), SCRCF. On April 27, 2017, the circuit court entered an order, via the e-filing system, denying Appellant's post-trial motion. (Order Denying Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial, attached as Exhibit A). That order stated that "[a]fter fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial is respectfully DENIED." (Exhibit A).

Appellant received written notice of entry of the e-filed order the day it was filed on April 27, 2017. Then, within 30 days after receipt of written notice of entry of the April 27, 2017 order denying Plaintiff's post-trial motion, Appellant served and filed her notice of appeal on May 26, 2017.

Our Supreme Court has previously reversed the Court of Appeals for misinterpreting Rule 59(e), SCRCF, and thereby wrongly dismissing an appeal. The Supreme Court did so because "civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party. . . and [w]e strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place." *Elam*, 361 S.C. at 17, 602 S.E.2d at 776 (internal citations omitted).

Further, our Supreme Court stated that “[o]ur mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written, 59(e) motion without concern a later appeal will be deemed untimely.” *Id.* That is exactly the case here. Appellant timely filed and timely served a written post-trial motion in accordance with Rule 59(e). Appellant then timely filed and timely served her notice of appeal following the denial of her post-trial motion.

III. Independent of Appellant’s arguments above, Respondent’s argument as to the untimeliness of Appellant’s post-trial motion was waived by Respondent.

Respondent filed nothing in opposition to the post-trial motion and never presented the conclusory argument it has now raised in its motion to dismiss. Respondent had a total of seven months after the Appellant’s post-trial motion was filed and served before the circuit court actually denied it by order e-filed on April 27, 2017. In that span of time, Respondent submitted absolutely nothing and never raised any argument at all to the circuit court regarding its ability to consider and decide the Appellant’s post-trial motion. As shown by Exhibit A hereto, the circuit court judge did actually consider and decide the Appellant’s post-trial motion.

By accepting and then ruling on the Appellant’s post-trial motion, the circuit court judge eliminated the argument that Respondent’s counsel now makes for the very first time. Respondent should be estopped from even bringing the instant motion to dismiss because Respondent’s counsel did not object to the submission of the Appellant’s post-trial motion to the circuit

court judge. Neither Respondent nor Respondent's counsel ever objected to or raised any argument concerning the Appellant's post-trial motion, not until the instant motion to dismiss served on August 24, 2017. The circuit court was able to deal with the Appellant's post-trial motion. Respondent was not prejudiced, and Respondent nor Respondent's counsel has even argued it. Therefore, any objection to the Appellant's post-trial motion was waived on April 27, 2017 when the circuit court's order was entered, and Respondent is estopped from bringing its motion.

CONCLUSION

Appellant's post-trial motion was captioned accurately and sought, in substance, the requested relief as it was captioned. This post-trial motion was timely filed and timely served. Following the trial court's denial of her post-trial motion, Appellant timely filed and timely served her notice of appeal. In the seven months while Appellant's post-trial motion was pending, Respondent never raised any argument whatsoever to the trial court concerning Appellant's post-trial motion and, therefore, Respondent waived its argument it now attempts to make after Appellant has filed her Initial Brief. For these reasons and the reasons contained herein, this Court has jurisdiction to hear this appeal. Accordingly, this Court should deny Respondent's motion to dismiss with prejudice to the Respondent to not permit further arguing the issue of timeliness of the appeal in its briefs.

[Signature Page Follows]

August 31, 2017

Respectfully submitted,



Stephen L. Goldfinch, Jr.

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Ryan P. Compton

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Attorneys for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
Christine LeFont,)
Plaintiff,)
vs.)
City of Myrtle Beach; Myrtle Beach)
Convention Center Hotel Corporation)
Defendants.)

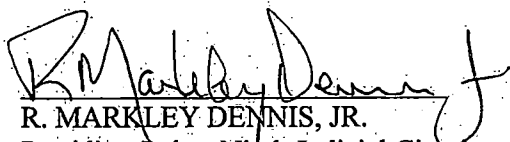
IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-26-0034

ORDER

This matter comes before me upon Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial filed by Stephen L. Goldfinch, Jr., attorney for the Plaintiff, Christine LeFont, on September 20, 2016. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Plaintiff's Motion for Reconsideration and/or Alter or Amend Order Granting Defendant's Motion for Directed Verdict and New Trial is respectfully **DENIED**;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

Dated: April 26, 2017



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Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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Case No. 2015-CP-26-00034

Christine LeFont, Appellant,

v.

City of Myrtle Beach; Myrtle Beach
Convention Center Hotel Corporation, Respondents.


PROOF OF SERVICE

I, the undersigned employee of Goldfinch Winslow, LLC, attorneys for Christine LeFont, certify that on the date indicated below, I served all counsel in this action with a copy of Appellant's Return to Respondent's Motion to Dismiss by hand delivery to:

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August 31, 2017
Murrells Inlet, South Carolina



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August 31, 2017

VIA FAX AND U.S. MAIL

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SC Court of Appeals

Re: Christine LeFont v. City of Myrtle Beach; Myrtle Beach Convention Center
Hotel Corporation
Appellate Case No.: 2017-001258
Lower Court No.: 2015-CP-26-00034
GW File: 17.385

Dear Madam Clerk:

Pursuant to Rule 262(a)(2), SCACR, enclosed for filing is the original and six (6) copies of the Appellant's Return to Respondent's Motion to Dismiss, via facsimile copy for filing and immediately being sent by United States mail, and a proof of service of this document upon counsel for Respondent.

I am providing a copy of the enclosed to opposing counsel by copy of this letter via hand delivery and e-mail. Thank you for your attention to this matter. If you have any questions or need any information, please do not hesitate to contact me.

Respectfully,

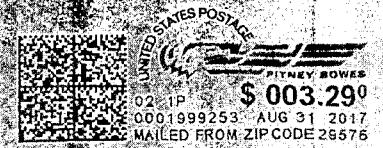
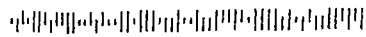
GOLDFINCH WINSLOW, LLC



Ryan P. Compton

Enclosures: As Stated

cc: William A. Bryan, Esquire
Amy Neuschafer, Esquire
(via hand delivery and e-mail)



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